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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/760,024	01/15/2004	Craig H. Barratt	ATH-0116	8508
30547 7590 09/10/2008 BEVER HOFFMAN & HARMS, LLP 2099 GATEWAY PLACE SUITE 320 SAN JOSE, CA 95110				
EXAMINER				
FOUD, HICHAM B				
ART UNIT		PAPER NUMBER		
2619				
MAIL DATE		DELIVERY MODE		
09/10/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/760,024

**Applicant(s)**

BARRATT ET AL.

**Examiner**

HICHAM B. FOUD

**Art Unit**

2619

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 50, 53, 57 and 61 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 50, 53, 57 and 61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***DETAILED ACTION***

1. In view of the appeal brief filed on 6/25/08, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below.

***Response to Amendment***

2. Claims 50, 53, 57 and 61 are pending in this application.

Claims 1-49, 51-52, 54-56, 58-60 and 62-67 have been canceled.

Claims 50, 53, 57 and 61 remain rejected as discussed below.

3. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

***Claim Objections***

4. In claim 57, note that claim scope is not limited by claim language that suggests or makes optional but does not require steps to be performed, or by claim language that does not limit a claim to a particular structure, such as by using the term "capable of". Therefore, claim language following this phrase will not be considered. It is suggested that Applicant remove this term.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 57 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 57 recites that the selection between the high-priority time slot and the low-priority time slot is based on a randomizing function. However, the specification as originally filed does not adequately describe how the selection is being done. Based on the original specification, the goal of the invention is allowing transmission of higher-priority traffic earlier than lower priority traffic and therefore provides quality of service (see [0012] of the original disclosure). In the contrary, selection of time slots based on randomizing function will not assure the quality of service since it is based on probabilities. Therefore, without further teachings, one skilled in the art does not know how to make and use the claimed invention without undue experimentation.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 50, 53 and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jayaraman et al. (US 6,963,549) and in view of Siloti (US 5,742,239).

As per claim 50, Jayaraman et al clearly discloses that a method of minimizing collisions in a CSMA/CA wireless data communication system using an access point, the method comprising: sensing the presence of a client desirous of communication with the access point (See Fig. 1, a local station 20 may request (block 61 of FIG. 2) that a particular bandwidth be reserved for a given traffic type over a defined period of time, column 2, lines 66-67 to column 3, line 1); allocating a start time slot list having at least one unique start time slot during which the client may begin transmitting (The central authority is used to selectively reserve the time slot based on at least in part a reservation schedule, column 1, lines 60-62); transmitting the start time slot list to the client (indicates the reserved time slot in the frame that is transmitted (block 78) to the requesting station, column 3, lines 11-16); and receiving a transmission from the client, the transmission beginning only during the start time slot(s) indicated by the start time slot list (If the central authority reserves the time slot, then during the time slot, the

central authority prevents the other local stations from transmitting (column 1, lines 62-64).

Jayaraman et al. clearly shows and discloses all the claimed invention. However, Jayaraman et al. does not teach wherein allocating includes: assigning at least one pair of a high-priority start time slot and a low-priority start time slot substantially equally displaced in time from a center start time slot. In the same field of endeavor, Siloti teaches wherein allocating includes: assigning at least one pair of a high-priority start time slot and a low-priority start time slot (see column 2 lines 39-49; wherein a node is assigned time slot 4 as in Figure 3 in both High and Low priority and transmit in either one depending on the current priority of the node) substantially equally displaced in time from a center start time slot (e.g. see Figure 3 wherein time slot 4 in the high and low are substantially equally displaced in time from a center start time slot 0 in the low). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention to combine the teaching of Jayaraman et al. with the teaching of Siloti in order to achieve Quality of Service in communications in which signal delays or interruptions cannot be tolerated.

Claims 53 and 61 are rejected for same reasons as claim 50.

8. Claim 57 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jayaraman et al in view of Siloti as applied to claims 50, 53, 61 above, and further in view of Iwamura (US 7,206,320).

As per claim 57, Siloti further discloses as mentioned in claim 50 or 53 that the selection between the high priority start time slot and the low priority start time slot is

based on the current priority of the node (see column 2 lines 39-49; wherein a node is assigned time slot 4 as in Figure 3 in both High and Low priority and transmit in either one depending on the current priority of the node). Jayaraman et al in view of Siloti discloses all the subject matter with the exception of explicitly disclosing that the selecting between the time slots is based on a randomizing function. However, Iwamura et al. teaches that the selecting between time slots is based on a randomizing function (Column 2 lines 11-14). Thus, it would have been obvious to the one skill in the art at the time of the invention to use the randomizing function as taught in Iwamura into the method of Jayaraman et al in view of Siloti for the purpose of avoiding collision by setting a randomized wait time so that two waiting devices do not collide.

#### **Response to Argument**

9. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

11. **Examiner's Note:** Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed

invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner. In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

When responding to this office action, applicants are advised to clearly point out the patentable novelty which they think the claims present in view of the state of the art disclosed by the references cited or the objections made. Applicants must also show how the amendments avoid such references or objections. See 37C.F.R 1.111(c). In addition, applicants are advised to provide the examiner with the line numbers and pages numbers in the application and/or references cited to assist examiner in locating the appropriate paragraphs.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hicham B. Foud whose telephone number is 571-270-1463. The examiner can normally be reached on Monday - Friday 10-6 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wing Chan can be reached on 571-272-7493. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.



For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hicham B Foud/  
Examiner, Art Unit 2619  
09/04/2008

/Wing F. Chan/  
Supervisory Patent Examiner, Art Unit 2619  
9/9/08